IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 1541 OF 1986

Bank of Baroda ....Plffs.
vs.
Hanuman Prasad Aggarwal
and Ors. .....Defnds.

V.V. Shinde i/b. Tandel and Co. for the plffs.
None for the defnds.

CORAM: S.U. KAMDAR, J.

DATE : 3RD AUGUST, 2005.

P.C. :

1. The present suit is filed for the recovery of sum of Rs.4,99,596.61/- with further interest at the rate of 19.5.% p.a. from the date of the suit till payment and or realisation.

2. Sometime in or about December, 1982 the plaintiff granted to the defendant bill purchase facility to the limit of Rs.2,97,617.56/-. Under the said bill purchase facility the plaintiff agreed to discount/purchase bills of exchange/hundies . In consideration thereof the defendant no.1 executed a

letter of bill of purchase undertaking dated 15.12.1982 and a letter confirming that he is a sole proprietor of the firm M/s. Nirmal Textiles and responsible to the liabilities of the firm.

3. On 15.12.1982 the defendant no.2 and 3 guranteed the said bill purchase facility which was given to the defendant no.1 and has executed the necessary deed of guarantee for the same. In pursuance of the aforesaid arrangement on 31.1.1983 and 1.2.1983 the defendant no.1 discounted two bills of exchange for the total amount of Rs.3,02,610.50/-. The said bills were purchased by the plaintiff. However on presentation thereof the same have been dishonoured. The plaintiff by their advocates letter dated 2/5/1985 addressed to the defendant no.1 called upon the defendant to make payment of the amount outstanding at the foot of the bill purchase facility account. Thereafter on 6.6.1985 the advocate of the 1st defendant addressed a letter and contended that the demand is premature on 18.11.85. Another letter was sent to the plaintiff demanding the aforesaid amount. However

in view of the fact that inspite of demand no payment was forthcoming from the defendants, the defendant has filed the present suit against the defendant no.1 being the Sole proprietor of Nirmal Textiles and defendant no.2 and 3 being the guarantors under the deed of guarantee dated 15.12.1982.

4. The defendant no.1 have filed the written statement and inter-alia contended that the said documents were executed in blank and that the demand is prematured because under the arrangement dated 26.10.83 the plaintiff had granted 60 months time to the defendants to make payment. It has been inter-alia contended that inrespect of the said bill of exchange the transfer receipt was issued in favour of the plaintiff and thus the defendants are not liable to the payment of the said amount. The defendant no.2 and 3 has also filed written statement dated 6..9.96 once again raising the identical defence.

5. Matter was on board on 7.6.2005. But since no

body was appearing notice was issued to the plaintiff. Thereafter plaintiff appeared but none appeared for the defendants therefore the matter was adjourned to 18.7.2005. The plaintiffs advocate was directed to give notice to the defendants. Pursuant thereto the plaintiff has given notice to the defendants advocate. The notice when served the advocate has endorsed the notice that papers are already been taken away by the client and thus he is not appearing in the matter. Pursuant thereto notice was issued to the defendants. However when the notice was sought to be served the said premises which was addressed on the record of the proceedings was found locked. However on inquiries it was found that the defendant no.2 and 3 are not residing therein and they have sold the flat. The matter was thereafter placed on board on 2.8.2005. Then the matter appeared on board today. Today also none appears for the defendants. The plaintiffs have filed the compilation of document and affidavit of evidence of one Mr. Shyam Jadhav. In view of the documents which are tendered on record and the oral evidence of witness which has not been contracted

and gave unchallenged, I pass the following decree.

There shall be decree in terms of prayer clause (a). However there shall be no order as to costs.

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